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HOUSE BILL 843

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Rick Miera

AN ACT

RELATING TO THE PUBLIC SCHOOLS; ENACTING THE PUBLIC SCHOOL LEASE PURCHASE ACT; ALLOWING, UNDER CERTAIN CIRCUMSTANCES, PUBLIC SCHOOL FACILITIES TO BE ACQUIRED PURSUANT TO LEASE PURCHASE ARRANGEMENTS; AUTHORIZING ADDITIONAL PROPERTY TAXES FOR SCHOOL DISTRICTS UPON THE APPROVAL OF THE QUALIFIED ELECTORS; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public School Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 20 of this act may be cited as the "Public School Lease Purchase Act"."

Section 2. A new section of the Public School Code is enacted to read:

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1            "[NEW MATERIAL] PURPOSE.--The purpose of the Public School  
2 Lease Purchase Act is to implement the provision of Article 9,  
3 Section 11 of the constitution of New Mexico, as approved by  
4 the voters of the state of New Mexico at the general election  
5 held in November 2006, which declares that a financing  
6 agreement entered into by a school district or a charter school  
7 for leasing of a building or other real property with an option  
8 to purchase for a price that is reduced according to the  
9 payments made by the school district or charter school pursuant  
10 to the financing agreement is not a debt if:

11            A. there is no legal obligation for the school  
12 district or charter school to continue the lease from year to  
13 year or to purchase the real property; and

14            B. the agreement provides that the lease shall be  
15 terminated if sufficient money is not available to meet the  
16 current lease payments."

17            Section 3. A new section of the Public School Code is  
18 enacted to read:

19            "[NEW MATERIAL] DEFINITIONS.--As used in the Public School  
20 Lease Purchase Act:

21            A. "financing agreement" or "lease purchase  
22 arrangement" means an agreement for the leasing of a building  
23 or other real property with an option to purchase for a price  
24 that is reduced according to the payments made, which periodic  
25 lease payments composed of principal and interest components

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1 are to be paid to the holder of the agreement and pursuant to  
2 which the owner of the building or other real property may  
3 retain title to or a security interest in the building or other  
4 real property and may agree to release the security interest or  
5 transfer title to the building or other real property to the  
6 school district for nominal consideration after payment of the  
7 final periodic lease payment;

8 B. except as limited by Section 19 of the Public  
9 School Lease Purchase Act, "local school board" includes the  
10 governing body of a locally chartered or state-chartered  
11 charter school; and

12 C. except as limited by Section 19 of the Public  
13 School Lease Purchase Act, "school district" includes a locally  
14 chartered or state-chartered charter school."

15 Section 4. A new section of the Public School Code is  
16 enacted to read:

17 "[NEW MATERIAL] NOTICE OF PROPOSED LEASE PURCHASE  
18 ARRANGEMENT--APPROVAL OF DEPARTMENT.--

19 A. When a school district contemplates entering  
20 into a lease purchase arrangement for a building or other real  
21 property payable in whole or in part from ad valorem taxes, the  
22 local school board, before initiating any proceedings for  
23 approval of such a lease purchase arrangement, shall forward to  
24 the department a copy of the proposed lease purchase  
25 arrangement and the source of funds that the local school board

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1 has identified to make payments due under the lease purchase  
2 arrangement.

3 B. A local school board shall not enter into a  
4 lease purchase arrangement without the approval of the  
5 department."

6 Section 5. A new section of the Public School Code is  
7 enacted to read:

8 "[NEW MATERIAL] LEASE PURCHASE ARRANGEMENTS--TERMS.--Lease  
9 purchase arrangements:

10 A. may have payments payable at intervals or at  
11 maturity as may be determined by the local school board;

12 B. may be subject to prepayment at the option of  
13 the local school board at such time or times and upon such  
14 terms and conditions with or without the payment of such  
15 premium or premiums as may be determined by the local school  
16 board;

17 C. may have a final payment date or mature at any  
18 time or times not exceeding thirty years after the date of  
19 execution;

20 D. may be payable at one time or in installments or  
21 may be in such other form as may be determined by the local  
22 school board;

23 E. may be priced at, above or below par and at a  
24 price that results in a net effective interest rate that does  
25 not exceed the maximum permitted by the Public Securities Act;

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1 F. may be acquired or executed by public bid, by  
2 negotiated sale or placement or directly negotiated or placed  
3 with the owner of the building or other real property subject  
4 to the lease purchase arrangement;

5 G. shall provide that there is no legal obligation  
6 for the school district to continue the lease purchase  
7 arrangement from year to year or to purchase the building or  
8 other real property; and

9 H. shall provide that the lease purchase  
10 arrangement shall be terminated if sufficient money is not  
11 available to meet any current lease payment."

12 Section 6. A new section of the Public School Code is  
13 enacted to read:

14 "[NEW MATERIAL] AUTHORIZING LEASE PURCHASE ARRANGEMENTS--  
15 RESOLUTION.--

16 A. If a local school board proposes to acquire a  
17 building or other real property through a lease purchase  
18 arrangement, it shall comply with the requirements of this  
19 section.

20 B. At a regular meeting or at a special meeting  
21 called for the purpose of considering the acquisition of a  
22 building or other real property through a lease purchase  
23 arrangement, a local school board shall:

24 (1) make a determination of the necessity for  
25 acquiring the building or other real property through a lease

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1 purchase arrangement;

2 (2) determine the estimated cost of the  
3 buildings or other real property needed;

4 (3) review a summary of the terms of the  
5 proposed lease purchase arrangement;

6 (4) identify the source of funds for the lease  
7 purchase payments;

8 (5) if obtaining all or part of the funds  
9 needed requires or anticipates the imposition of a property  
10 tax, determine the estimated rate of the tax and what, if any,  
11 the percentage increase in property taxes will be for real  
12 property owners in the school district; and

13 (6) if the board agrees that the lease  
14 purchase arrangement is in the best interest of the school  
15 district, forward a copy of the arrangement to the department  
16 pursuant to Section 4 of the Public School Lease Purchase Act.

17 C. After receiving department approval of the lease  
18 purchase arrangement, the local school board may adopt a final  
19 resolution approving the lease purchase of the building or  
20 other real property. If the local school board finds that  
21 obtaining all or part of the funds needed for the lease  
22 purchase arrangement requires the imposition of a property tax,  
23 the board may also adopt a resolution to be presented to the  
24 voters pursuant to Section 8 of the Public School Lease  
25 Purchase Act.

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1           D. The local school board shall not adopt a  
2 resolution for or approve a lease purchase arrangement for a  
3 term that exceeds thirty years."

4           Section 7. A new section of the Public School Code is  
5 enacted to read:

6           "[NEW MATERIAL] PAYMENTS UNDER LEASE PURCHASE  
7 ARRANGEMENTS.--A school district may apply any legally  
8 available funds to the payments due on or any prepayment  
9 premium payable in connection with lease purchase arrangements  
10 as they become due, including any combination of:

11           A. money from the school district's general fund;

12           B. investment income actually received from  
13 investments;

14           C. proceeds from taxes imposed to pay school  
15 district general obligation bonds or taxes imposed pursuant to  
16 the Public School Capital Improvements Act, the Public School  
17 Buildings Act or the Educational Technology Equipment Act;

18           D. revenues received from the sale of bonds or  
19 notes pursuant to the School Revenue Bond Act or the School  
20 District Bond Anticipation Notes Act;

21           E. loans, grants or lease payments received from  
22 the public school capital outlay council pursuant to the Public  
23 School Capital Outlay Act;

24           F. state distributions to the school district  
25 pursuant to the Public School Improvements Act;

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1 G. fees or assessments received by the school  
2 district;

3 H. proceeds from the sale of real property and  
4 rental income received from the rental or leasing of school  
5 district property;

6 I. grants from the federal government as assistance  
7 to those areas affected by federal activity authorized in  
8 accordance with Title 20 of the United States Code, commonly  
9 known as "PL 874 funds" or "impact aid"; and

10 J. revenues from the tax authorized pursuant to  
11 Sections 8 through 12 of the Public School Lease Purchase Act,  
12 if proposed by the local school board and approved by the  
13 voters."

14 Section 8. A new section of the Public School Code is  
15 enacted to read:

16 "[NEW MATERIAL] AUTHORIZATION FOR LOCAL SCHOOL BOARD TO  
17 SUBMIT QUESTION OF LEASE PURCHASE TAX.--A local school board  
18 may adopt a resolution to submit to the qualified electors of  
19 the school district the question of whether a property tax at a  
20 rate not to exceed the rate specified in the resolution should  
21 be imposed upon the net taxable value of property allocated to  
22 the school district under the Property Tax Code for the purpose  
23 of making payments under a specific lease purchase arrangement.  
24 The resolution shall:

25 A. specify the rate of the proposed tax, which

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1 shall not exceed ten dollars (\$10.00) on each one thousand  
2 dollars (\$1,000) of net taxable value of property allocated to  
3 the school district under the Property Tax Code;

4 B. specify the date an election will be held to  
5 submit the question of imposition of the tax to the qualified  
6 electors of the district; and

7 C. limit the imposition of the proposed tax to no  
8 more than thirty property tax years."

9 Section 9. A new section of the Public School Code is  
10 enacted to read:

11 "[NEW MATERIAL] AUTHORIZING RESOLUTION--TIME LIMITATION.--  
12 The resolution authorized under Section 8 of the Public School  
13 Lease Purchase Act shall be adopted no later than May 15 in the  
14 year in which the tax is proposed to be imposed."

15 Section 10. A new section of the Public School Code is  
16 enacted to read:

17 "[NEW MATERIAL] CONDUCT OF ELECTION--NOTICE--BALLOT.--  
18 A. An election on the question of imposing a tax  
19 under Sections 8 through 12 of the Public School Lease Purchase  
20 Act may be held in conjunction with a regular school district  
21 election or may be conducted as or held in conjunction with a  
22 special school district election, but the election shall be  
23 held prior to July 1 of the property tax year in which the tax  
24 is proposed to be imposed. Conduct of the election shall be as  
25 prescribed in the School Election Law for regular and special

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1 school district elections.

2 B. The resolution required to be published as  
3 notice of the election under Section 1-22-4 or 1-22-5 NMSA 1978  
4 shall include as the question to be submitted to the voters  
5 whether a property tax at a rate not to exceed the rate  
6 specified in the authorizing resolution should be imposed for  
7 the specified number of property tax years not exceeding thirty  
8 years upon the net taxable value of all property allocated to  
9 the school district for payments due under lease purchase  
10 arrangements.

11 C. The ballot shall include the information  
12 specified in Subsection B of this section and shall present the  
13 voter the choice of voting "for the lease purchase tax" or  
14 "against the lease purchase tax".

15 Section 11. A new section of the Public School Code is  
16 enacted to read:

17 "[NEW MATERIAL] ELECTION RESULTS--CERTIFICATION.--The  
18 certification of the results of an election held on the  
19 question of imposition of a lease purchase tax shall be made in  
20 accordance with the School Election Law, and a copy of the  
21 certificate of results shall be mailed immediately to the  
22 secretary."

23 Section 12. A new section of the Public School Code is  
24 enacted to read:

25 "[NEW MATERIAL] IMPOSITION OF TAX--LIMITATIONS.--If as a  
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1 result of an election held in accordance with Sections 8  
2 through 11 of the Public School Lease Purchase Act a majority  
3 of the qualified electors voting on the question votes in favor  
4 of the imposition of the tax, the tax rate shall be certified,  
5 unless the local school board directs that the tax levy not be  
6 made for the year, by the department of finance and  
7 administration at the rate specified in the authorizing  
8 resolution and the tax shall be imposed at the rate certified  
9 in accordance with the provisions of the Property Tax Code.  
10 The revenue produced by the tax shall be expended only for  
11 payments due under lease purchase arrangements, as specified in  
12 the authorizing resolution."

13 Section 13. A new section of the Public School Code is  
14 enacted to read:

15 "[NEW MATERIAL] PUBLICATION OF NOTICE--VALIDATION.--

16 A. After adoption of a resolution approving a lease  
17 purchase arrangement, the local school board shall publish  
18 notice of the adoption of the resolution once in a newspaper of  
19 general circulation in the school district.

20 B. After the passage of thirty days from the  
21 publication required by Subsection A of this section, any  
22 action attacking the validity of the proceedings taken by the  
23 local school board preliminary to and in the authorization of  
24 and entering into the lease purchase arrangement described in  
25 the notice is perpetually barred."

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1           Section 14. A new section of the Public School Code is  
2 enacted to read:

3           "[NEW MATERIAL] REFUNDING OR REFINANCING LEASE PURCHASE  
4 ARRANGEMENTS.--School districts may enter into lease purchase  
5 arrangements for the purpose of refunding or refinancing any  
6 lease purchase arrangements then outstanding, including the  
7 payment of any prepayment premiums thereon and any interest  
8 accrued or to accrue to the date of prepayment maturity of the  
9 outstanding lease purchase arrangements. Until the proceeds of  
10 the lease purchase arrangements issued for the purpose of  
11 refunding or refinancing outstanding lease purchase  
12 arrangements are applied to the prepayment or retirement of the  
13 outstanding lease purchase arrangements, the proceeds may be  
14 placed in escrow and invested and reinvested. The interest,  
15 income and profits, if any, earned or realized on any such  
16 investment may, in the discretion of the local school board,  
17 also be applied to the payment of the outstanding lease  
18 purchase arrangements to be refunded or refinanced by  
19 prepayment or retirement, as the case may be. After the terms  
20 of the escrow have been fully satisfied and carried out, any  
21 balance of such proceeds and interest, if any, earned or  
22 realized on the investments thereof may be returned to the  
23 local school board to be used for payment of the refunding or  
24 refinancing lease purchase arrangement. If the proceeds from a  
25 tax imposed pursuant to Sections 8 through 12 of the Public

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1 School Lease Purchase Act were used as a source of payments for  
2 the refunded lease purchase arrangement, the proceeds may  
3 continue to be used for the refunding or refinancing lease  
4 purchase arrangements without the requirement of an additional  
5 election on the issue."

6 Section 15. A new section of the Public School Code is  
7 enacted to read:

8 "[NEW MATERIAL] AGREEMENT OF THE STATE.--The state does  
9 hereby pledge to and agree with the holders of any lease  
10 purchase arrangement entered into under the Public School Lease  
11 Purchase Act that the state will not limit or alter the rights  
12 hereby vested in school districts to fulfill the terms of any  
13 lease purchase arrangement or in any way impair the rights and  
14 remedies of the holders of lease purchase arrangements until  
15 the payments due thereon, and all costs and expenses in  
16 connection with any action or proceedings by or on behalf of  
17 those holders, are fully met and discharged. School districts  
18 are authorized to include this pledge and agreement of the  
19 state in any lease purchase arrangement."

20 Section 16. A new section of the Public School Code is  
21 enacted to read:

22 "[NEW MATERIAL] LEGAL INVESTMENTS FOR PUBLIC OFFICERS AND  
23 FIDUCIARIES.--Lease purchase arrangements entered into under  
24 the authority of the Public School Lease Purchase Act shall be  
25 legal investments in which all insurance companies, banks and

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1 savings and loan associations organized under the laws of the  
2 state, public officers and public bodies and all  
3 administrators, guardians, executors, trustees and other  
4 fiduciaries may properly and legally invest funds."

5 Section 17. A new section of the Public School Code is  
6 enacted to read:

7 "[NEW MATERIAL] TAX EXEMPTION.--The state covenants with  
8 the original holder and all subsequent holders and transferees  
9 of lease purchase arrangements entered into by the local school  
10 boards, in consideration of the acceptance of and payment for  
11 the lease purchase arrangements entered into pursuant to the  
12 Public School Lease Purchase Act, that lease purchase  
13 arrangements and the income from the lease purchase  
14 arrangements shall at all times be free from taxation by the  
15 state, except for estate or gift taxes and taxes on transfers."

16 Section 18. A new section of the Public School Code is  
17 enacted to read:

18 "[NEW MATERIAL] CUMULATIVE AND COMPLETE AUTHORITY.--The  
19 Public School Lease Purchase Act shall be deemed to provide an  
20 additional and alternative method for acquiring buildings and  
21 other real property authorized thereby and shall be regarded as  
22 supplemental and additional to powers conferred by other laws  
23 and shall not be regarded as a derogation of any powers now  
24 existing. The Public School Lease Purchase Act shall be deemed  
25 to provide complete authority for acquiring buildings and other

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1 real property and entering into lease purchase arrangements  
2 contemplated thereby, and no other approval of any state agency  
3 or officer, except as provided therein, shall be required with  
4 respect to any lease purchase arrangements, and the local  
5 school board acting thereunder need not comply with the  
6 requirements of any other law applicable to the issuance of  
7 debt by school districts."

8 Section 19. A new section of the Public School Code is  
9 enacted to read:

10 "[NEW MATERIAL] LEASE PURCHASE ARRANGEMENTS FOR CHARTER  
11 SCHOOLS.--A locally chartered or state-chartered charter school  
12 may enter into a lease purchase arrangement pursuant to the  
13 Public School Lease Purchase Act, provided that:

14 A. a governing body of a charter school shall not  
15 propose a tax or conduct an election pursuant to Sections 8  
16 through 12 of that act, but nothing in this subsection prevents  
17 a charter school from receiving revenue from a tax proposed by  
18 the local school board for the district in which the charter  
19 school is located and approved by the voters; and

20 B. nothing in the Public School Lease Purchase Act  
21 authorizes additional revenue to be distributed or appropriated  
22 to charter schools."

23 Section 20. A new section of the Public School Code is  
24 enacted to read:

25 "[NEW MATERIAL] LIBERAL INTERPRETATION.--The Public School  
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1 Lease Purchase Act, being necessary for the welfare of the  
2 state and its inhabitants, shall be liberally construed to  
3 effect its purposes."

4 Section 21. Section 22-18-1 NMSA 1978 (being Laws 1967,  
5 Chapter 16, Section 228, as amended) is amended to read:

6 "22-18-1. GENERAL OBLIGATION BONDS--AUTHORITY TO ISSUE.--

7 A. After consideration of the priorities for the  
8 school district's capital needs as shown by the facility  
9 assessment database maintained by the public school facilities  
10 authority and subject to the provisions of Article 9, Section  
11 11 of the constitution of New Mexico and Sections 6-15-1 and 6-  
12 15-2 NMSA 1978, a school district may issue general obligation  
13 bonds for the purpose of:

14 (1) erecting, remodeling, making additions to  
15 and furnishing school buildings;

16 (2) purchasing or improving school grounds;

17 (3) purchasing computer software and hardware  
18 for student use in public schools;

19 (4) providing matching funds for capital  
20 outlay projects funded pursuant to the Public School Capital  
21 Outlay Act;

22 (5) making payments pursuant to a financing  
23 agreement entered into by the school district or a charter  
24 school located in the school district for the leasing of a  
25 building or other real property with an option to purchase for

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a price that is reduced according to payments made; or

(6) any combination of these purposes.

B. The bonds shall be fully negotiable and constitute negotiable instruments within the meaning and for all purposes of the Uniform Commercial Code."